

## ANALYSIS OF ORIGINAL BILL

Author: Alquist Analyst: Roger Lackey Bill Number: AB 1678

Related Bills: None Telephone: 845-3627 Introduced Date: 01-15-98

Attorney: Doug Bramhall Sponsor:

SUBJECT: FTB Compile Listing of 100 Largest Tax Delinquencies & Post On World Wide Web

### SUMMARY

This bill would require that the Franchise Tax Board (FTB) compile a monthly list of the 100 largest tax delinquencies under the Revenue and Taxation Code (R&TC) and post that list on the World Wide Web.

### EFFECTIVE DATE

This bill would be effective January 1, 1999.

### PROGRAM HISTORY

In March of 1995, Governor Wilson issued an executive order requiring all state agencies to provide public information on the Internet. The California Government web site was established allowing agencies to comply with the executive order and provide agency information without developing an independent web site of their own. The Franchise Tax Board (FTB) was the first department to comply with the order by providing general information and forms on the Internet. FTB has since established its own web site to more easily customize data and gather statistics on information requests.

### SPECIFIC FINDINGS

**Federal Law** provides that it is unlawful for any state and other employees to willfully disclose to any person, except as authorized, any federal return or federal return information acquired by him or another person in any manner in connection with his service as an employee or an officer. Any violation of this law is a felony punishable by a fine in an amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

**Federal and State law** requires state agencies to use strict requirements and guidelines in the use of personal information. The Information Practices Act of 1977 (Civil Code Section 1798) and the California Public Records Act (Gov. Code

### DEPARTMENTS THAT MAY BE AFFECTED:

\_\_\_ STATE MANDATE

\_\_\_ GOVERNOR'S APPOINTMENT

Department Director Position:

\_\_\_ S \_\_\_ O  
\_\_\_ SA \_\_\_ OUA  
\_\_\_ N \_\_\_ NP  
\_\_\_ NA \_\_\_ NAR  
\_\_\_ X \_\_\_ PENDING

Agency Secretary Position:

\_\_\_ S \_\_\_ O  
\_\_\_ SA \_\_\_ OUA  
\_\_\_ N \_\_\_ NP  
\_\_\_ NA \_\_\_ NAR  
DEFER TO \_\_\_

### GOVERNOR'S OFFICE USE

Position Approved \_\_\_  
Position Disapproved \_\_\_  
Position Noted \_\_\_

Department Director

Gerald H. Goldberg

2/23/98

Agency Secretary

Date

By:

Date:

beginning with Sec. 6250) provide measures to assure fair treatment of individuals who are the subjects of state agency records.

These acts place specific requirements on state agencies in the collection, use, maintenance and dissemination of information relating to individuals. With exceptions, individuals may review, obtain copies, request amendments and corrections, and dispute information pertaining to them in state records.

Civil remedies and penalties are provided for violations that adversely affect individuals who are the subjects of State agency records.

The Revenue and Taxation Code (R&TC) provides for the confidentiality of tax data and the statutory right to access data. All information on an individual personal income tax return is confidential. Exceptions occur only when the information has been made a matter of public record. For example, the filing of a Notice of State Tax Lien with the county recorder's office is tax information that has become public record. The notice includes the amount due, the name and last known address of the taxpayer liable for the amount due, and the fact that the FTB has complied with all provisions of the law in the computation and levy of the amount due.

A lien may be filed if a taxpayer or person fails to pay any liability imposed by the R&TC at the time it becomes due and payable. For the purpose of state tax liens, amounts are "due and payable" on the following dates:

1. For amounts of any liability disclosed on a return filed on or before the date payment is due (with regard to any extension of time to pay), the date the amount is established on the records of the Franchise Tax Board, except that in no case will it be prior to the day after the payment due date.
2. For amounts of any liability disclosed on a return filed on or after the date payment is due (with regard to any extension of time to pay), the date the amount is established on the records of the Franchise Tax Board.
3. For amounts of any liability pertaining to jeopardy assessments, the date the notice of the Franchise Tax Board's finding is mailed or issued.
4. For all other amounts of liability, the date the assessment is final.

The Taxpayer Bill of Rights requires notification be sent to the taxpayer at least 30 days prior to the filing of a state tax lien. The notification must include the statutory authority for issuing the lien, the earliest date on which the lien may be filed or recorded and the remedies available to the taxpayer to prevent the filing of the lien.

Once a notice of state tax lien has been recorded or filed, a state tax lien continues in effect for 10 years from the date of recording or filing. The recording of the state tax lien establishes a public record of the existence of the state tax lien against all property and rights to property whether real or personal, tangible or intangible, including all after-acquired property and rights to property, belonging to the taxpayer and located in this state.

The R&TC provides that certain extraneous matters relative to a corporation may be disclosed only in response to a request regarding a named entity and only if there is no reason to believe that the information will be used for commercial list purposes.

The R&TC considers extraneous matters to be the exact corporate title, corporate number, the date of the commencement of business in this state, taxable year adopted, filing date of return, name, date and title of individuals signing affidavit to the return, due date of the taxes, taxes unpaid, entity's address, private address of officers and directors.

**This bill** would provide that the FTB shall compile a list of the 100 largest tax delinquencies under the Personal Income Tax Law (PITL) and the Bank and Corporation Tax Law (B&CTL).

**This bill** would provide that a delinquency consists of an amount of tax that has been delinquent for more than 90 days including any additions, penalties, or interest.

**This bill** would provide that the list shall include for each deficiency the following information:

- The name of the delinquent taxpayer
- The total delinquent amount.
- The length of time for which payment has been delinquent.
- The type of tax, the payment of which is delinquent.

**This bill** would provide that the 100 largest tax delinquencies under the PITL and the B&CTL would be posted on the World Wide Web.

#### Implementation Considerations

It is unclear if it is the author's intent to compile the 100 largest delinquencies for the PITL and the B&CTL (200 total), or 100 largest, taking into account both PITL and B&CTL.

This bill would provide that a delinquency consists of an amount of tax that has been delinquent for more than 90 days. It is unclear at what point a taxpayer would be considered 90 days delinquent. For example, a taxpayer may be 90 days delinquent on an assessment but in the midst of the appeal process or tax court, or a taxpayer may have additional tax that is over 90 days due, but has made payment arrangements to resolve the tax due. The term "delinquency" would need to be clearly defined to allow the Franchise Tax board to properly implement this bill.

The FTB receives approximately 14 million tax returns annually. An unidentified percentage of taxpayers have identical names only properly identified by the taxpayer's social security number or taxpayer identification number. Providing a taxpayer's name on the World Wide Web may create financial difficulties for an innocent taxpayer who simply has the identical name as a taxpayer identified on the list.

#### Technical Considerations

This bill would require the FTB to disclose private taxpayer information on the World Wide Web and, as a result, violate the state laws set forth in the California Public Records Act, the Information Practices Act and the Revenue and Taxation Code. This bill should be amended to add a reference "notwithstanding" these other sections to clarify that this disclosure would be allowed.

This bill would require the FTB to post the list on the "World Wide Web." The "World Wide Web" is an information server on the Internet. It is suggested that the term "World Wide Web" be replaced with the term "Internet," as the more inclusive term.

#### FISCAL IMPACT

##### Departmental Costs

The provisions of this bill would not significantly impact the department's costs.

##### Tax Revenue Estimate

To the extent that this bill may negatively impact the state's self-assessed tax system, this bill may result in a decreased but not quantifiable level of compliance.

#### BOARD POSITION

Pending.